

The opinion in support of the decision being entered  
today is *not* binding precedent of the Board.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JOEL E. SHORT, RAY S. EWAN,  
and JEROME SORCSEK

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Appeal 2007-1976  
Application 09/693,512  
Technology Center 2100

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Decided: October 10, 2007

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Before KENNETH W. HAIRSTON, JOHN C. MARTIN, and ANITA  
PELLMAN GROSS, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

REMAND TO THE EXAMINER

A preliminary review of the record before us leads us to conclude that  
this case is not in condition for a decision on appeal.

The subject application was filed on October 20, 2000, and it claims  
the benefit of an October 22, 1999 date in 60/161,181.

The primary reference to Morris, U.S. Patent No. 6,453,361 B1, has an October 27, 2000 filing date.

Although the Appellants did not question the use of a prior art reference with a filing date after the filing date of the subject application, we must, however, raise it as an issue *sua sponte* because a proper prior art rejection can not be based on an improper prior art reference. Thus, the application is hereby remanded to the Examiner for further consideration.

This application, by virtue of its “special” status, requires an immediate action. *See* MPEP § 708.01. It is important that the Board be informed promptly of any action affecting the appeal in this case.

Appeal 2007-1976  
Application 09/693,512

REMANDED

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